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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-682

SANTA CLARA PUEBLO, et al., *Petitioners,*

v.

JULIA MARTINEZ, et al., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

## MOTION TO FILE BRIEF AMICI CURIAE
and
## BRIEF OF AMICI CURIAE
of

THE PUEBLO DE COCHITI, THE PUEBLO OF ISLETA, THE PUEBLO OF JEMEZ, THE PUEBLO OF LAGUNA, THE PUEBLO OF SANDIA, THE PUEBLO OF ZIA, THE PUEBLO OF SAN FELIPE, THE PUEBLO OF SAN ILDEFONSO, THE PUEBLO OF TAOS, THE HUALAPAI TRIBE, THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION AND THE ALL-INDIAN PUEBLO COUNCIL, INC.

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**On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit**

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## MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Come now The Pueblo de Cochiti, The Pueblo of Isleta, The Pueblo of Jemez, The Pueblo of Laguna, The Pueblo of Sandia, The Pueblo of San Felipe, The Pueblo of San Ildefonso, The Pueblo of Taos, The Pueblo of Zia, The Hualapai Tribe, The Salt River Pima-Maricopa Indian Community, The Confederated Tribes of the Umatilla Indian Reservation and The All-Indian Pueblo Council, Inc., pursuant to Supreme Court Rule 42, by and through their attorneys, and allege:

1. The movants herein other than the All-Indian Pueblo Council, Inc., are Indian Tribes duly recognized by the Federal Government, exercising

powers of self-government and subject to the provisions of the Act of April 11, 1968 (84 Stat. 77 et seq.; 25 U.S.C., Sections 1301 et seq.) hereinafter called the Indian Civil Rights Act (ICRA).

2. The All-Indian Pueblo Council Inc., is an organization consisting of the nineteen Indian Pueblos located in New Mexico, duly chartered as a non-profit corporation under the laws of the State of New Mexico, the purpose of which is to act in concert for the advancement of goals common to the Indian Pueblos of New Mexico.

3. Consent has been obtained from the Petitioners to file this motion and a brief amici curiae in this cause. Consent has not been obtained from the Respondents.

4. The basic questions of law herein are:

(1) Does the ICRA vest the Federal Courts with the jurisdiction to determine questions of tribal membership?

(2) If the Federal Court does have such jurisdiction, does the Indian Civil Rights Act prohibit an Indian tribe, in the exercise of self-government powers, from enacting or enforcing an ordinance which imposes different membership standards on the acquisition of tribal membership, based on the sex of the member parent of a child seeking membership?

These questions are of utmost concern and importance to the movants herein for the reason that the decision of the Tenth Circuit in *Martinez, et al.* v. *Santa Clara Pueblo, et al.*, 540 F. 2d 1039, will, if affirmed, severely cloud long standing traditions, including the training of males for membership in pueblos, and erode the authority of these pueblos and tribes



to determine their own membership and membership standards and will also cause serious disturbance of religious cultural and traditional patterns of living in these tribes and pueblos.

5. The above questions of law will not be adequately presented to this Court for the reason that the facts presented to the trial court, as reviewed by the Tenth Circuit, do not and cannot show the impact of this question of law upon the religious, cultural and traditional patterns of living in these tribes and pueblos.

WHEREFORE, all of the above-named tribes and Pueblos and the All-Indian Pueblo Council, Inc., respectfully move this court for an order allowing them to file a brief amici curiae on the merits in support of the Respondents.

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## BRIEF OF AMICI CURIAE

### I.

### INTEREST OF AMICI CURIAE

The amici curiae herein adopt in full the statement of *Interest of Amicus Curiae* set forth in their brief in support of the Respondents Petition for Writ of Certiorari heretofore filed and allowed in this cause upon such petition, cause No. 76-682, October Term, 1976.

## II.

## ARGUMENT

### Point One

### THE DECISION BELOW INCORRECTLY HOLDS THAT THE INDIAN CIVIL RIGHTS ACT CONSTITUTES A WAIVER OF SOVEREIGN IMMUNITY OF INDIAN TRIBES.

This court has never had the occasion to determine if the Act of April 11, 1968 (84 Stat. 77 et seq.; 25 U.S.C., Sec. 1301 et seq., in particular, Sec. 1302), commonly called the Indian Civil Rights Act (hereinafter "ICRA") implies a waiver of sovereign immunity.

It is beyond dispute that Indian tribes are sovereign, except as may expressly be limited by Act of Congress or treaty. *Cherokee Nation* v. *Georgia,* 30 U.S. (5 Pet.) 1 (1831); *Worchester* v. *Georgia,* 31 U.S. (6 Pet.) 515 (1832): *Talton* v. *Mayes,* 163 U.S. 376 (1896); *Toledo* v. *Pueblo de Jemez,* 119 S. Supp. 429 (D.C. N.M. 1954). One of the attributes of this sovereignty is immunity from suit except by virtue of an express waiver by Act of Congress. *United States* v. *United States Fidelity Co.,* 309 U.S. 506 (1940). The Court below has so held regarding dispute between a tribe and its members. *Dickie* v. *Cheyenne-Arapahoe Tribes, Inc.,* 304 F. 2d 113 (10th Cir. 1962); *Native American Church* v. *Navajo Tribal Council,* 272 F. 2d 131 (10th Cir. 1959).

The Tenth Circuit clearly reversed this direction and held that the ICRA is an implied waiver of sovereign immunity. This decision is a clear contravention of the principle that a governmental act is not waived by implication. *United States* v. *King,* 395 U.S. 1 (1969).



The ICRA contains no express waiver of sovereign immunity, except, perhaps, with respect to writs of habeas corpus, 25 U.S.C., Sec. 1303. Absent an express declaration of waiver, this court must conclude that the ICRA did not waive sovereign immunity in such an important aspect of tribal government as the standards and criteria incident to membership in the tribe. The Congress allowed writs of habeas corpus to be filed for alleged ICRA violations, nothing more. This must be construed as a non-waiver in all other cases.

It is admitted that lower courts are in conflict on this question. Decisions of the lower courts are in conflict with respect to whether Section 1302 of the Indian Civil Rights Act is a waiver of immunity. Compare *Wounded Head* v. *Tribal Council of the Oglala Sioux Tribe,* 507 F. 2d 1079 (8th Cir. 1975); *Pinnow* v. *Shoshone Tribal Council,* 314 F. Supp. 1157 (D.C. Wyo. 1970), aff'd on other grounds sub nom. *Slattery* v. *Arapahoe Tribal Council,* 453 F. 2d 278 (10th Cir. 1971); *Yellow Bird* v. *Oglala Sioux Tribe,* 380 F.Supp. 438 (D.C. S.D. 1974); *Jacobson* v. *Forest County Patawatomi Community,* 389 F. Supp. 994 (D.C. Wis. 1974) with *Martinez* v. *Santa Clara Pueblo,* 540 F. 2d 1039 (10th Cir. 1976); *Dry Creek Lodge, Inc.* v. *United States,* 515 F. 2d 926 (10th Cir. 1975); *Brown* v. *United States,* 486 F. 2d 658 (8th Cir. 1973); *Johnson* v. *Lower Elwha Tribal Community,* 484 F. 2d 200 (9th Cir. 1973); *Daly* v. *United States,* 483 F. 2d 700 (8th Cir. 1973). We submit that this court must resolve this conflict by a clear assertion and reiteration of the rule of non-waiver except by express Congressional enactment.

**Point Two**

**THE ICRA EQUAL PROTECTION CLAUSE DOES NOT PERMIT COURTS TO IMPOSE COMPLETE FOURTEENTH AMENDMENT STANDARDS ON TRIBAL ACTION. EQUAL PROTECTION UNDER THE ICRA MUST BE VIEWED FROM THE TRIBAL CONTEXT.**

Assuming, *arguendo*, that the Federal Courts have jurisdiction to inquire into equal protection attacks on tribal membership action, such jurisdiction should not be asserted to impose on tribes the full panoply of Fourteenth Amendment equal protection law. This is apparent from a review of ICRA equal protection decisions prior to the decision below in this case.

Prior to the enactment of the ICRA, neither the first ten amendments to the United States Constitution nor the Fourteenth Amendment were applicable to the actions of Indian tribes. *Talton* v. *Mayes, supra; Native American Church* v. *Navajo Tribal Council, supra; Barta* v. *Oglala Sioux Tribe of Pine Ridge Reservation,* 259 F. 2d 553 (8th Cir. 1958); *Twin City Chippewa Tribal Council* v. *Minnesota Chippewa Tribe,* 270 F. 2d 529 (8th Cir. 1959). Indian tribes, as sovereign entities with inherent internal sovereignty, were not subject to the Constitutional restrictions applicable to Federal and State action.

The decision in *Native American Church* triggered activity to have Congress legislate some actionable restraints on arbitrary tribal action in deprivation of the basic rights of persons subject to tribal jurisdiction. The legislative result was the ICRA. The portion of the ICRA pertinent here is 25 U.S.C. Sec. 1302 (8) which states:



> "No Indian Tribe in exercising powers of self-government shall—
>
> * * *
>
> (8) deny to any person within its jurisdiction *the equal protection of its laws* or deprive any person of liberty or property without due process of law (emphasis supplied); * * *"

The legislative history of the ICRA indicates clearly that the Congress did not intend for non-Indian, anglo-saxon, Fourteenth Amendment equal protection standards to be applied per se to actions of Indian tribes. The Tenth Circuit recognized as much in *Groundhog* v. *Keeler,* 442 F. 2d 674 at pages 681-82 (1971), when discussing the Interior Department substitute for S. 961, the original Indian Civil Rights proposal:

> "The Department of Interior's bill would, in effect, impose upon the Indian governments the same restrictions applicable presently to the Federal and State governments with several notable exceptions, viz., the 15th amendment, certain of the procedural requirements of the 5th, 6th, and 7th amendments, *and, in some respects, the equal protection requirement of the 14th amendment* (emphasis supplied)".

And in *Lohnes* v. *Cloud,* 366 F. Supp. 619 (D.C. N.D. 1975), the court said, at page 261, citing *Solomon* v. *La Rose,* 335 F. Supp. 715, 718 (D.C. Neb. 1971):

> ". . . that its was the intent of Congress in enacting the Indian Civil Rights Act to create sui generis a body of substantive rights, patterned *in part* on the Federal Bill of Rights, to extricate the individual Indian from (a) legal to no man's land (emphasis supplied) . . ."

The approach taken in *Groundhog, Lohnes* and *Solomon* is well-founded in the legislative history of the ICRA. Hearings on Indians civil rights legislation were held on June 22, 23, 24 and 29, 1965. Hearings, Subcommittee on Constitutional Rights, Senate Committee on the Judiciary, 89th Cong. 1st Session, G.P.O., 1965. One of the bills being proposed was S. 961 which would have subjected the tribes to the entire spectrum of the first ten and the Fourteenth Amendments.

At these hearings, Mr. Arthur Lazarus, attorney for the Association of American Indian Affairs, Inc., testified prophetically to the precise issue now before the Court. Mr. Lazarus said:

> "* * * Secondly, S. 961 unintentionally would impair tribal sovereignty in areas unrelated to individual rights and on matters where change would be, and is, opposed by an overwhelming majority of the people. Among the Indian nations in the State of New York, for example, eligibility for tribal membership descends exclusively through the female line and, in addition, only tribal members may qualify to inherit interests in reservation land—both traditional practices which the Senecas and Tuscaroras clearly wish to preserve, but which might be barred by the equal protection clause or some other provision of the Constitution. Similarly, constitutional principles regarding the separation of church and state could cause serious difficulties among some of the pueblos in New Mexico, while the doctrine of 'one man, one vote' has no valid application to an Indian tribe still governed by a chiefs council.
>
> "* * * Perhaps the major problem posed by S. 961, however, is the attempt in this legislation to impose upon all Indian communities at one fell swoop a sophisticated legal system which has been developing in our society over a period of centuries. I suggest that Indian tribes vary—each having different resources, customs, size, degree of education or assimilation, etc.—and that the proposed establishment of one set of legal rules for all tribes is unworkable and unwise. I further suggest that it is not realistic to expect Indians (or any other nation) to learn respect for our constitutional principles when their application is required by legislative direction from outside and does not grow out of the actual operations of tribal government. * * *"



S. 961 did not become law. Eventually, another bill, S. 1843, became the ICRA. For a summary history of the route of S. 1843 through the Congress, see *Lazarus, Title II of the 1968 Civil Rights Act: An Indian Bill of Rights,* N.D.L. Rev., Vol. 45, No. 3.

Prior to the decision of the Tenth Circuit in this case, the courts have consistently recognized that equal protection under the ICRA is not equivalent to equal protection under the Fourteenth Amendment. An excellent statement of this basic policy is found in *Wounded Head et al.* v. *Tribal Council of Oglala Sioux Tribe, supra.* In *Wounded Head,* the Plaintiffs, members of the Oglala Sioux Tribe between the ages of 18 and 21, attacked the Oglala Sioux voting franchise rules providing for a minimum voting age of 21. The Plaintiffs' asserted that the equal protection clause of Section 1302 (8) included the Federal Twenty Sixth Amendment, lowering the voting age to 18. The Eighth Circuit rejected this contention, holding that absent specific Congressional legislation to the contrary, the right of franchise in a tribal election was exclusively a tribal decision. The court said that the purpose of the

ICRA was to impose certain governmental restrictions on tribes which were applicable to states and the Federal Government while at the same time to preserve tribal self-government and cultural identity. Therefore, the equal protection clause in the ICRA was to be viewed in the context of tribal governmental and cultural background and was not co-extensive with the equal protection clause of the Fourteenth Amendment.

More importantly, it had been held that tribal membership provisions are not subject to judicial examination for alleged equal protection violations unless it can be shown that these provisions were not uniformly applied. *Yellowbird* v. *Oglala Sioux Tribe of South Dakota, supra.* And in *Daly* v. *United States et al., supra,* it was held that blood quantum requirements for holding tribal office greater than the blood quantum requirements for voting did not violate ICRA equal protection. See also *O'Neal* v. *Cheyenne River Sioux Tribe,* 482 F. 2d 1140 (8th Cir. 1973), *White Eagle* v. *One Feather,* 478 F.2d 1311 (8th Cir. 1973), and *Crowe* v. *Eastern Band of Cherokee Indians, Inc.,* 560 F. 2d 1231 (4th Cir. 1974).

The courts which have assumed jurisdiction have rendered certain decisions on equal protection. In *Daly* v. *United States, et al., supra,* the Eighth Circuit distinguished the matter of office holding from the question of an alleged malapportionment of tribal representatives in violation of the one-man, one vote rules stemming from *Baker* v. *Carr,* 369 U.S. 186 (1962). Therefore, on the reapportionment issue, *Daly* held that when the tribe had established a system of incorporating non-Indian standards of election of officers, the tribe must submit to some reapportionment stand-



ard. The same result was obtained in *White Eagle* v. *One Feather, supra,* wherein the Court said:

> "We need not explore upon this record the degree to which Federal Courts may assert jurisdiction over tribal elections in all circumstances. *Our problem has no such complexities as tribal membership or blood lines.* The tribe itself, in the case before us, has established voting procedures precisely paralleling those commonly found in our culture, if not taken verbatum therefrom. Here, then we have no problem of forcing an alien culture, with strange procedures, on this tribe (emphasis supplied)".

From these decisions, consistent principles evolved, viz:

1. Equal protection under the ICRA is not as broad as equal protection under the Fourteenth Amendment.

2. The particular cultural context or environment in which the equal protection question arose will be of utmost importance, probably decisive, in the case.

3. The closer a tribe has developed rules similar to that of the anglo-saxon legal and political system, the closer the ICRA equal protection clause will be construed as being consistent with Fourteenth Amendment standards. Conversely, tribal customs alien to the anglo-saxon legal tradition will not be viewed in light of Fourteenth Amendment requirements, but instead viewed in the tribal cultural context.

4. The overriding consideration in any ICRA equal protection case is whether or not the questioned tribal rule, custom or tradition is being administered with an even hand.

Assuming a waiver of sovereign immunity, are tribal membership disputes a proper matter for ICRA judicial inquiry? The answer appears to be a qualified "Yes". The Tenth Circuit indicated as much, in dicta, in its decision in *Slattery* v. *Arapahoe Tribal Council, supra.* See also *Laramie* v. *Nicholson,* 487 F. 2d 315 (9th Cir. 1973).

However, the courts have been loath to interfere with tribal membership standards. In *Yellowbird* v. *Oglala Sioux Tribe of South Dakota, supra,* the court refused to entertain an equal protection attack on the Oglala Sioux membership standards, absent an allegation that these membership standards were not uniformly applied. We submit that the Tenth Circuit, in *Slattery,* had the same principle in mind and, it appears quite clear that Judge Mechem, in deciding this case at the trial level, came to the same conclusion. It is important to note that the court in *Yellowbird* equated the contested membership standards with the blood quantum office-holding standards upheld in *Daly,* by characterizing both as internal tribal matters. Both *Yellowbird* and *Daly* are completely consistent with *Groundhog* v. *Keeler, supra.*

Membership in an Indian tribe is a question uniquely involving Indian culture. There is a no non-Indian equivalent. It cannot be equated with western world citizenship standards. Neither can it be equated with membership in a private organization such as a fraternity, sorority, country club or Elks club. As Judge Mechem so aptly observed in his superb analysis at trial level (402 F. Supp. 5) the tribal membership standards of Santa Clara Pueblo are the result of the cultural pattern developed by the pueblo. Likewise,



membership standards developed by other pueblos and tribes result from cultural patterns developed by those pueblos and tribes. The affidavits of tribal officials and the comprehensive report of Dr. Florence Ellis are attached to our brief in support of the Petition for Writ of Certiorari in this case, and the references set forth in the brief of amici curiae Seneca Nation and Association of American Indian Affairs, Inc. in support of such petition, show the great divergence of membership standards based on differing cultural norms. If the Federal Courts engage in establishing their own norms by which tribal membership standards were to be judged, they will indeed be substituting inbred non-Indian value judgments for tribal cultural value judgments developed and molded over years or centuries of close-knit living to fit a particular cultural context.

Under the interpretation that assumes jurisdiction, a Federal Court would, theoretically, entertain an equal protection case involving a tribal membership dispute. A clear deviation by a tribe from its own standards would be subject to judicial inquiry and remedy. If a tribe establishes a standard, ignores the standard and uses membership denial as a political or social weapon against a particular person within the class subject to the standards, a Federal Court would have the authority under the ICRA to step into the breach to insure equal protection. However, the standard against which ICRA equal protection must be measured is a tribal standard, not a standard imposed by the Federal judiciary.

The trial court found that the Santa Clara membership ordinance of 1939 was applied uniformly. Once

having reached this point, he considered the standard itself to be immune from non-Indian value judgments, i.e., he considered the standard to be a matter of tribal decision, not for decision by the court. This decision was clearly correct and must, we submit, be reaffirmed by this court.

### Point Three

### THE TRIBAL AUTHORITY OVER MEMBERSHIP IS A RESERVED POWER NOT TO BE OVERTURNED BY IMPLIED APPLICATION OF NON-INDIAN EQUAL PROTECTION NORMS.

Felix S. Cohen stated the general rule as to the powers of Indian tribes in a clear, concise manner, as early as 1934:

> "Perhaps the most basic principle of all Indian law, supported by a host of decisions . . ., is the principle *that those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.*
>
> Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, these tribes could no longer be safely permitted to handle. The statutes of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive context. What is not expressly limited remains within the domain of tribal sovereignty, and therefore falls within the statutory category, 'powers vested in any Indian tribe or tribal council by existing law.'"



> *United States Department of the Interior, Office of the Solicitor, Solicitor's Opinion M-22781, POWERS OF INDIAN TRIBES (1934); emphasis in the original).*

Cohen is supported by numerous decisions. For example, see *Worchester* v. *Georgia, supra; Cherokee Nation* v. *Georgia, supra; United States* v. *Winans,* 198 U.S. 371 (1905), and *United States* v. *Washington,* 384 F. Supp. 312, 407 (W.D. Wash. 1974). Under this analysis, the membership ordinance of Santa Clara Pueblo, and the membership standards developed by other Indian governments must be upheld unless it can be shown that Congress has pre-empted Indian tribal sovereignty in the determination of membership questions. The tribal power to determine questions of membership inheres in tribal sovereignty and has been beyond dispute for more than a century and a half. *Cherokee Nation* v. *Georgia, supra.* Moreover, the tribes may qualify the rights of membership, at least as to "naturalized" persons. *Cherokee Intermarriage Cases,* 203 U.S. 76 (1906). Tribes may revoke membership, *Roff* v. *Burney,* 168 U.S. 218 (1897), and make rules governing recognition and adoption, *Smith* v. *Bonifer,* 154 F. 883 (D.C. Ore. 1907). Thus, up to the adoption of the ICRA, Indians continued to exercise the power to choose tribal membership and other membership questions. The question is, therefore: Did Congress, in enacting the ICRA, preempt this power?

Neither the statute as enacted, its legislative history, nor the cases decided under it prior to the Tenth Circuit decision below lend credence to the view that Congress in enacting the ICRA intended to preempt the

membership power. *1968 U.S. Cong. and Adm. News,* p. 1837. On the contrary, the decided cases speak consistently of the deference to be paid Indian culture and autonomy. *O'Neal* v. *Cheyenne River Sioux Tribe, supra.*

The very object of the ICRA is to avoid threatening fundamental tribal interests. *McCurdy* v. *Steele,* 353 F. Supp. 629 (D.C. Utah 1973). The right of a tribe to choose its own membership has been considered fundamental from the very outset of federal-Indian relations. *Cherokee Nation* v. *Georgia, supra.* In the words of the trial court, if tribal sovereignty means anything, it means a tribe has the power to choose its own members.

There is a close analogy here to the power of the Congress of the United States over immigration and naturalization. The legislative power of Congress over the admission of aliens is complete. *Kleindienst* v. *Mandel,* 408 U.S. 753 (1972); *Matthews* v. *Diab,* 426 U.S. 67 (1976). Congress can legislate immigration and naturalization standards which discriminate against certain children or parents of United States citizens based on sex and illegitimacy. *Faillo, et al.* v. *Bell,* No. 75-6297, Sup. Ct., 45 Law Week 4402, decided April 26, 1977, affirming *Faillo* v. *Levi,* 406 F. Supp. 162 (E.D.N.Y. 1975). This court has held that with respect to immigration and naturalization, Congress regularly makes rules that would be unacceptable if applied to citizens. *Matthews* v. *Diaz, supra,* at page 80. Why then, cannot an Indian tribe, exercising its powers of self-government, prescribe rules which might be unacceptable to the general citizenry in the non-Indian context?



## Point Four

### THE TENTH CIRCUIT APPLIED AN IMPROPER EQUAL PROTECTION STANDARD TO THE 1939 SANTA CLARA ORDINANCE.

Not only did the Tenth Circuit erroneously apply standard Fourteenth Amendment principles to the Santa Clara Ordinance, but it went one step farther. It adopted a strict compelling interest test not yet applied by this court in non-Indian gender-based discrimination cases. Indeed the majority of this court has never accepted compelling interest to test such discrimination. To the contrary, this court has consistently applied a test which states that the rule being attacked must serve important governmental objectives and be substantially related to the achievement of those objectives. *Craig* v. *Boren,* —— U.S. ——, 50 L. ed. 2d 397 (1976); *Schlesinger* v. *Ballard,* 419 U.S. 498 (1975); *Geduldig* v. *Aiello,* 417 U.S. 484 (1974); *Kahn* v. *Shevin,* 416 U.S. 351 (1974); *Reed* v. *Reed,* 404 U.S. 71 (1971).

The trial court found essentially, that the 1939 Santa Clara Ordinance met the standard set forth in these cases.

It is inconceivable that the Pueblo of Santa Clara, and other Indian tribes, with traditions foreign to anglo-saxon norms, must, according to the Tenth Circuit, have their membership standards based on sex judged by a standard which this court has chosen not to impose on the majority population inbred with standards which are foreign to the traditional Indian context.

## III.

## CONCLUSION

The Amici Curiae respectfully submit that this court order a dismissal of this case for lack of jurisdiction or, in the alternative, order the decision below be reversed and the decision of the trial court be reinstated.

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